

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

KINSALE INSURANCE COMPANY, a
foreign insurer.

Plaintiff,

v.

EVOLUTION SIDE, LLC, a Washington
limited liability company and construction
contractor; and LAER ENTERPRISES INC., a
Washington corporation and construction
contractor, KENTON SCHUMACHER, a
Washington resident; MADALYN HORN, a
Washington resident; JENNIFER LALLY, a
Washington resident; BRANDON &
MICHELLE CONNOR, Washington residents;
MIKE NETTEKOVEN, a Washington resident;
NOAH MANN, a Washington resident;
STACEY MCGEATH, a Washington resident;
JENNIFER ELLSWORTH-BOESL, a
Washington resident; STORM WENDT, a
Washington resident; DAVID BALDWIN, a
Washington resident; TROY RUNNER, a
Washington resident; TRAVIS REANO, a
Washington resident; DEREK TULLUCK, a
Washington resident; RHONDA AND JEFF
SAWYER, Washington residents; JENNIFER
BROADBENT, a Washington resident; ALI
JONES & JULIO VALDEZ, Washington
residents; JOHN KENNEDY, a Washington

No. 3:23-cv-5029

**COMPLAINT FOR DECLARATORY
RELIEF**

1 resident; ALEX CORRAL AND KELSIE
 2 TROTINGNON, a Washington resident;
 3 RICKY & MADISON HALL, Washington
 4 residents; LARRY PAGUE, a Washington
 5 resident; JULIE ACHESON, a Washington
 6 resident; STEPHEN HANNAN, a Washington
 7 resident; ANNIE NAHON, a Washington
 8 resident; TEMASWATI JOHNSTON, a
 9 Washington resident; AMIR MOUSA VI, a
 10 Washington resident; TYLER GOLD, a
 11 Washington resident; NOEL TEVES, a
 12 Washington resident; TERESA RODMAN, a
 13 Washington resident; IVAN NGAUAMO, a
 14 Washington resident; ANDREW & DIANE
 15 MORTAGNE, Washington residents; BRIAN
 16 HELLESTO, a Washington resident;
 17 VERNON BRANCO, a Washington resident;
 18 JOSHUA & JOHANNA SUMMERS,
 19 Washington residents; RON BOCCA, a
 20 Washington resident; KELLY ROBINSON, a
 21 Washington resident; KEN CUNNINGHAM, a
 22 Washington resident; PATRICK BROOKE, a
 23 Washington resident; NATE MOWRY, a
 Washington resident; TREVOR ANDERSON,
 a Washington resident; DEBRA SILVER, a
 Washington resident; TODD GRIFFEN, a
 Washington resident; GARY MAGREEHAN, a
 Washington resident; KRISTEN & ALEX
 HALL, Washington residents; CALEB
 HARRIS, a Washington resident; KIERAN
 HUNT, a Washington resident; LINDSEY
 CALDERWOOD, a Washington resident;
 CATHY KOMBOL, a Washington resident;
 REBEKAH ENGEBO, a Washington resident;
 GABRIELLA MANCILLA, a Washington
 resident; BRIAN AND ANISSA REGO,
 Washington residents; KATIE MIKESELL, a
 Washington resident; TROY SALISBURY &
 JESSICA MATIAS, Washington residents;
 GREG & TIFFANY HOPKINS, Washington
 residents; RENE LOPEZ RIVERA, a
 Washington resident; ETHAN
 SCHIERENBECK, a Washington resident;
 JUDY PRENOVOST, a Washington resident;

1 ALYSSA MERCER, a Washington resident;
2 SETH & CASSIE POHLMAN, Washington
3 residents; TANYA EVANS, a Washington
4 resident; ADAM POHLMAN, a Washington
5 resident; ARDEN BARDEN, a Washington
6 resident; IRIS PALLER-MILNE, a Washington
7 resident; JEFF & KATHERINE POTASKY,
Washington residents; RYAN HILDEBRAND,
a Washington resident; MIKE & SANDY
O'HARA, Washington residents;

Defendants.

8 Plaintiff Kinsale Insurance Company (Kinsale) submits the following Complaint for
9 Declaratory Relief.

10 I. INTRODUCTION

11 1.1 This is an insurance coverage action seeking declaratory relief pursuant to 28
12 U.S.C. §§ 2201 and 2202. Kinsale seeks a determination that it does not owe a duty to defend or
13 indemnify Evolution Side, LLC (Evolution Side) under the policy of insurance issued by Kinsale
14 with respect to the claims brought by Laer Enterprises Inc., (Laer) in *Laer Enterprises, Inc. v.*
15 *General Enterprise, Inc., et al.*, King County Superior Court Cause No. 21-2-10435-1 SEA. (the
16 “Underlying Lawsuit”).

17 II. PARTIES

18 2.1 Plaintiff Kinsale is a foreign eligible surplus lines insurer organized under the
19 laws of the State of Arkansas with its principal place of business in the State of Virginia.

20 2.2 Upon information and belief, Defendant Evolution Side is a Washington State
21 limited liability corporation, and all members of Defendant Evolution Side are residents and
22 citizens of the State of Washington.

1 2.3 Upon information and belief, Defendant Laer is a Washington State corporation
2 incorporated under the laws of the State of Washington with its principal place of business in
3 SeaTac, Washington.

4 2.4 Upon information and belief, Defendant Kenton Schumacher is the owner of a
5 home in the Suntop Farms community located at 420 Becky Ave E Enumclaw, WA 98022.

6 2.5 Upon information and belief, Defendant Madalyn Horn is the owner of a home
7 in the Suntop Farms community located at 425 Becky Ave E Enumclaw, WA 98022.

8 2.6 Upon information and belief, Defendant Jennifer Lally is the owner of a home in
9 the Suntop Farms community located at 444 Becky Ave E Enumclaw, WA 98022.

10 2.7 Upon information and belief, Defendants Brandon & Michelle Connor is the
11 owner of a home in the Suntop Farms community located at 453 Becky Ave E Enumclaw, WA
12 98022.

13 2.8 Upon information and belief, Defendant Mike Nettekoven is the owner of a home
14 in the Suntop Farms community located at 461 Becky Ave E Enumclaw, WA 98022.

15 2.9 Upon information and belief, Defendant Noah Mann is the owner of a home in
16 the Suntop Farms community located at 466 Becky Ave E Enumclaw, WA 98022.

17 2.10 Upon information and belief, Defendant Stacey McGeath is the owner of a home
18 in the Suntop Farms community located at 517 Becky Ave E Enumclaw, WA 98022.

19 2.11 Upon information and belief, Defendant Jennifer Ellsworth-Boesl is the owner of
20 a home in the Suntop Farms community located at 578 Becky Ave E Enumclaw, WA 98022.

21 2.12 Upon information and belief, Defendant Storm Wendt is the owner of a home in
22 the Suntop Farms community located at 602 Becky Ave E Enumclaw, WA 98022.

1 2.13 Upon information and belief, Defendant David Baldwin is the owner of a home
2 in the Suntop Farms community located at 614 Becky Ave E Enumclaw, WA 98022.

3 2.14 Upon information and belief, Defendant Troy Runner is the owner of a home in
4 the Suntop Farms community located at 621 Becky Ave E Enumclaw, WA 98022.

5 2.15 Upon information and belief, Defendant Travis Reano is the owner of a home in
6 the Suntop Farms community located at 633 Becky Ave E Enumclaw, WA 98022.

7 2.16 Upon information and belief, Defendant Derek Tulluck is the owner of a home in
8 the Suntop Farms community located at 598 Bondgard Ave E Enumclaw, WA 98022.

9 2.17 Upon information and belief, Defendants Rhonda and Jeff Sawyer is the owner of
10 a home in the Suntop Farms community located at 603 Bondgard Ave E Enumclaw, WA 98022.

11 2.18 Upon information and belief, Defendant Jennifer Broadbent is the owner of a
12 home in the Suntop Farms community located at 615 Bondgard Ave E Enumclaw, WA 98022.

13 2.19 Upon information and belief, Defendants Ali Jones & Julio Valdez is the owner
14 of a home in the Suntop Farms community located at 510 Carrie Dr E Enumclaw, WA 98022.

15 2.20 Upon information and belief, Defendant John Kennedy is the owner of a home in
16 the Suntop Farms community located at 526 Carrie Dr E Enumclaw, WA 98022.

17 2.21 Upon information and belief, Defendants Alex Corral and Kelsie Trotignon is the
18 owner of a home in the Suntop Farms community located at 542 Carrie Dr E Enumclaw, WA
19 98022.

20 2.22 Upon information and belief, Defendants Ricky and Madison Hall is the owner of
21 a home in the Suntop Farms community located at 574 Carrie Dr. E Enumclaw, WA 98022.

22 2.23 Upon information and belief, Defendant Larry Pague is the owner of a home in
23

1 the Suntop Farms community located at 577 Carrie Dr. E Enumclaw, WA 98022.

2 2.24 Upon information and belief, Defendant Julie Acheson is the owner of a home in
3 the Suntop Farms community located at 589 Carrie Dr. E Enumclaw, WA 98022.

4 2.25 Upon information and belief, Defendant Stephen Hannan is the owner of a home
5 in the Suntop Farms community located at 601 Carrie Dr E Enumclaw, WA 98022.

6 2.26 Upon information and belief, Defendant Annie Nahon is the owner of a home in
7 the Suntop Farms community located at 646 Carrie Drive E Enumclaw, WA 98022.

8 2.27 Upon information and belief, Defendant Temaswati Johnston is the owner of a
9 home in the Suntop Farms community located at 555 Cooper Lane North Enumclaw, WA 98022.

10 2.28 Upon information and belief, Defendant Amir Mousa VI is the owner of a home
11 in the Suntop Farms community located at 625 Deusen Ln N Enumclaw, WA 98022.

12 2.29 Upon information and belief, Defendant Tyler Gold is the owner of a home in the
13 Suntop Farms community located at 351 Ericksen Lane North Enumclaw, WA 98022.

14 2.30 Upon information and belief, Defendant Noel Teves is the owner of a home in the
15 Suntop Farms community located at 318 Franks Lane N Enumclaw, WA 98022.

16 2.31 Upon information and belief, Defendant Teresa Rodman is the owner of a home
17 in the Suntop Farms community located at 296 Franks Ln N Enumclaw, WA 98022.

18 2.32 Upon information and belief, Defendant Ivan Ngauamo is the owner of a home in
19 the Suntop Farms community located at 152 Grennan Ln N Enumclaw, WA 98022.

20 2.33 Upon information and belief, Defendants Andrew & Diane Mortagne is the owner
21 of a home in the Suntop Farms community located at 188 Grennan Ln N Enumclaw, WA 98022.

22 2.34 Upon information and belief, Defendants Brian & Janai Hellesto is the owner of
23

1 a home in the Suntop Farms community located at 201 Grennan Ln N Enumclaw, WA 98022.

2 2.35 Upon information and belief, Defendant Vernon Branco is the owner of a home
3 in the Suntop Farms community located at 202 Grennan Lane N Enumclaw, WA 98022.

4 2.36 Upon information and belief, Defendants Joshua and Johanna Summers is the
5 owner of a home in the Suntop Farms community located at 266 Grennan Ln N Enumclaw, WA
6 98022.

7 2.37 Upon information and belief, Defendant Ron Bocca is the owner of a home in the
8 Suntop Farms community located at 205 Holdener Ln N Enumclaw, WA 98022.

9 2.38 Upon information and belief, Defendant Kelly Robinson is the owner of a home
10 in the Suntop Farms community located at 184 Iris Ln N Enumclaw, WA 98022.

11 2.39 Upon information and belief, Defendant Ken Cunningham is the owner of a home
12 in the Suntop Farms community located at 227 Jasmine Ln N Enumclaw, WA 98022.

13 2.40 Upon information and belief, Defendant Patrick Brooke is the owner of a home
14 in the Suntop Farms community located at 451 Jasmine Ln N Enumclaw, WA 98022.

15 2.41 Upon information and belief, Defendant Nate Mowry is the owner of a home in
16 the Suntop Farms community located at 616 Marcie Ln N Enumclaw, WA 98022.

17 2.42 Upon information and belief, Defendant Trevor Anderson is the owner of a home
18 in the Suntop Farms community located at 630 Marcie Ln N Enumclaw, WA 98022.

19 2.43 Upon information and belief, Defendant Debra Silver is the owner of a home in
20 the Suntop Farms community located at 637 Marcie Lane N Enumclaw, WA 98022.

21 2.44 Upon information and belief, Defendant Todd Griffen is the owner of a home in
22 the Suntop Farms community located at 644 Marcie Lane N Enumclaw, WA 98022.

1 2.45 Upon information and belief, Defendant Gary Magreehan is the owner of a home
2 in the Suntop Farms community located at 658 Marcie Ln N Enumclaw, WA 98022.

3 2.46 Upon information and belief, Defendants Kristen & Alex Hall is the owner of a
4 home in the Suntop Farms community located at 602 Mount Peak St N Enumclaw, WA 98022.

5 2.47 Upon information and belief, Defendant Caleb Harris is the owner of a home in
6 the Suntop Farms community located at 615 Mount Peak St N Enumclaw, WA 98022.

7 2.48 Upon information and belief, Defendant Kieran Hunt is the owner of a home in
8 the Suntop Farms community located at 629 Mount Peak St N Enumclaw, WA 98022.

9 2.49 Upon information and belief, Defendant Lindsey Calderwood is the owner of a
10 home in the Suntop Farms community located at 685 Mount Peak St Enumclaw, WA 98022.

11 2.50 Upon information and belief, Defendant Cathy Kombol is the owner of a home in
12 the Sun top Farms community located at 530 Peterson Dr. E Enumclaw, WA 98022.

13 2.51 Upon information and belief, Defendant Rebekah Engebo is the owner of a home
14 in the Suntop Farms community located at 637 Petersen Dr E Enumclaw, WA 98022.

15 2.52 Upon information and belief, Defendant Gabriella Mancilla is the owner of a
16 home in the Suntop Farms community located at 651 Peterson Dr. E Enumclaw, WA 98022.

17 2.53 Upon information and belief, Defendants Brian & Anissa Rego is the owner of a
18 home in the Suntop Farms community located at 990 Petersen Dr E Enumclaw, WA 98022.

19 2.54 Upon information and belief, Defendant Katie Mikesell is the owner of a home in
20 the Suntop Farms community located at 1003 Petersen Dr. E Enumclaw, WA 98022.

21 2.55 Upon information and belief, Defendants Troy Salisbury & Jessica Matias is the
22 owner of a home in the Suntop Farms community located at 1078 Petersen Dr. E Enumclaw, WA
23

1 98022.

2 2.56 Upon information and belief, Defendants Greg & Tiffany Hopkins is the owner
3 of a home in the Suntop Farms community located at 1081 Petersen Dr. E Enumclaw, WA 98022.

4 2.57 Upon information and belief, Defendant Rene Lopez Rivera is the owner of a
5 home in the Suntop Farms community located at 835 Riley Dr E Enumclaw, WA 98022.

6 2.58 Upon information and belief, Defendant Ethan Schierenbeck is the owner of a
7 home in the Suntop Farms community located at 842 Riley Dr E Enumclaw, WA 98022.

8 2.59 Upon information and belief, Defendant Judy Prenovost is the owner of a home
9 in the Suntop Farms community located at 878 Riley Drive E Enumclaw, WA 98022.

10 2.60 Upon information and belief, Defendant Alyssa Mercer is the owner of a home in
11 the Suntop Farms community located at 885 Riley Dr. E Enumclaw, WA 98022.

12 2.61 Upon information and belief, Defendants Seth & Cassie Pohlman is the owner of
13 a home in the Suntop Farms community located at 907 Riley Dr E Enumclaw, WA 98022.

14 2.62 Upon information and belief, Defendant Tanya Evans is the owner of a home in
15 the Suntop Farms community located at 986 Riley Dr E Enumclaw, WA 98022.

16 2.63 Upon information and belief, Defendant Adam Pohlman is the owner of a home
17 in the Suntop Farms community located at 1012 Riley Dr. E Enumclaw, WA 98022.

18 2.64 Upon information and belief, Defendant Arden Barden is the owner of a home in
19 the Suntop Farms community located at 1038 Riley Dr East Enumclaw, WA 98022.

20 2.65 Upon information and belief, Defendant Iris Paller-Milne is the owner of a home
21 in the Suntop Farms community located at 906 Sigrist Dr E Enumclaw, WA 98022.

22 2.66 Upon information and belief, Defendants Jeff & Katherine Potasky is the owner
23

1 of a home in the Suntop Farms community located at 607 Vickie Ln N Enumclaw, WA 98022.

2 2.67 Upon information and belief, Defendant Ryan Hildebrand is the owner of a home
3 in the Suntop Farms community located at 643 Vickie Ln N Enumclaw, WA 98022.

4 2.68 Upon information and belief, Defendants Mike & Sandy O'Hara is the owner of a
5 home in the Suntop Farms community located at 661 Vickie Ln N Enumclaw, WA 98022.

6 **III. JURISDICTION AND VENUE**

7 3.1 This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1332 as the
8 amount in controversy exceeds \$75,000.00.

9 3.2 Venue is proper with this Court pursuant to 28 U.S.C. § 1391 as this case involves
10 a claim for insurance coverage stemming from the alleged losses that occurred in Enumclaw,
11 Washington and all individual defendants reside within this judicial district.

12 **IV. FACTS**

13 **A. The Subject Loss**

14 4.1 Upon information and belief, Laer entered into a Master Trade Agreement with
15 LGI Homes, LHI Corporate, LLC, and LGI Homes Group, LLC (collectively, "LGI") to install
16 protective siding on the Suntop Farms community homes (hereinafter the "Project").

17 4.2 On or about January 1, 2020, Laer entered into a Master Subcontract Agreement
18 with Evolution Side to subcontract some of its work on the Project. This work included installing
19 protective siding on some of the homes at the Project.

20 4.3 Upon information and belief, in February of 2021, the area surrounding the
21 Project experienced a winter storm with high wind speeds. It is alleged that as a result of this
22 winter storm, multiple homes at the Project sustained damage (hereinafter the "Subject Loss").
23

1 It is further alleged that this damage was caused by defective construction of the exterior
2 protective siding.

3 4.4 It is alleged that the Project's Homes have been examined by experts who found
4 that the siding is not firmly secured into underlying building studs or components and that repairs
5 will be required.

6 **B. The Underlying Lawsuit**

7 4.5 On October 6, 2021, the owners of the affected homes at the Project (hereinafter
8 the "Underlying Plaintiffs") filed the Underlying Lawsuit against Laer for damages arising as a
9 result of the alleged defective construction.

10 4.6 On December 6, 2021, Laer filed its Answer to the Underlying Plaintiffs'
11 Complaint and a Third-Party Complaint against Evolution Side, alleging claims for contribution,
12 contractual indemnity and defense, breach of contract/additional insured obligation, and breach
13 of contract.

14 4.7 On December 8, 2021, Evolution Side notified Kinsale of the loss via email. This
15 email included a copy of the Third-Party Complaint filed by Laer against Evolution Side (the
16 "Underlying Lawsuit").

17 4.8 On February 2, 2022, Kinsale agreed to defend Evolution Side pursuant to an
18 express Reservation of Rights. Kinsale also assigned defense counsel to defend Evolution Side.

19 **V. THE KINSALE POLICY**

20 5.1 Kinsale issued a policy of insurance to Evolution Side, policy number
21 0100093333-0, providing coverage from August 7, 2019 to August 7, 2020 (hereinafter the
22 "Policy").

5.2 The Policy contains limits of insurance of \$1 million each occurrence and \$2 million in the aggregate with a per occurrence deductible of \$5,000 which applies to loss and expense payments.

5.3 The Policy's Insuring Agreement states as follows:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "prop-

erty damage: only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or presumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

CG 00 01 10 01

5.4 The Policy also provides the following provisions regarding exclusions:

2. Exclusions

This insurance does not apply to:

.....

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property"

or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

CG 00 01 10 01

5.5 The Policy provides the following Fungi and Bacteria exclusion:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

<i>Attached To and Forming Part of Policy</i> 0100093333-0	<i>Effective Date of Endorsement</i> 08/07/2019 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i> Evolution Side LLC
<i>Additional Premium:</i> \$0	<i>Return Premium:</i> \$0	

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2.
**Exclusions of Section I – Coverage A – Bodily Injury
And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

1 a. "Bodily injury" or "property damage"
2 which would not have occurred, in
3 whole or in part, but for the actual,
4 alleged or threatened inhalation of,
5 ingestion of, contact with, exposure
6 to, existence of, or presence of, any
7 "fungi" or bacteria on or within a
 building or structure, including its
 contents, regardless of whether any
 other cause, event, material or
 product contributed concurrently or
 in any sequence to such injury or
 damage.

8 b. Any loss, cost or expenses arising out
9 of the abating, testing for, monitoring,
10 cleaning up, removing, containing,
11 treating, detoxifying, neutralizing,
 remediating or disposing of, or in any
 way responding to, or assessing the
 effects of, "fungi" or bacteria, by any
 insured or by any other person or
 entity.

12 This exclusion does not apply to any "fungi"
13 or bacteria that are, are on, or are contained
14 in, a good or product intended for bodily
 consumption.

15 **B. The following exclusion is added to**
16 **Paragraph 2. Exclusions of Section I –**
 Coverage B – Personal And Advertising
 Injury Liability:

17 **2. Exclusions**

18 This insurance does not apply to:

19 **Fungi Or Bacteria**

20 a. "Personal and advertising injury"
21 which would not have taken place, in
22 whole or in part, but for the actual,
 alleged or threatened inhalation of,
 ingestion of, contact with, exposure

to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.

- b.** Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

C. The following definition is added to the **Definitions** Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED

CG2167-1204

- 5.6 The Policy provides the following Tract Housing Project of More than Scheduled Number of Units exclusion:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - RESIDENTIAL CONDOMINIUMS, TOWNHOMES, OR TRACT HOUSING

PROJECT OF MORE THAN SCHEDULED NUMBER OF UNITS; ALL TIMESHARES

<i>Attached To and Forming Part of Policy</i> 0100093333-0	<i>Effective Date of Endorsement</i> 08/07/2019 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i> Evolution Side LLC
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<i>Additional Premium:</i> \$0	<i>Return Premium:</i> \$0
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This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE

SCHEDULE

1.	Number of residential single family houses in a project or development:	20
2.	Number of residential condominium or town homes in a project or development:	50
3.	Number of residential condominiums or town homes in a conversion location:	20

The following exclusions are added to this policy:

1. This insurance does not apply to "bodily injury" or "property damage" included within the "products completed operations hazard" arising out of, resulting from, caused by, contributed to, or in any way related to work on any residential single family house in a project or development in which more than the number of residential single family houses shown in item 1. of the above Schedule, have been built by you or on your behalf, or, are in any stage of development, planning or construction by you or on your behalf.

This exclusion shall not apply to maintenance, service, repairs, additions or remodeling:

- a. for an owner of an individual single family house; or
- b. to those areas of a completed and occupied development or project that are under the control of a residential owner's association.

2. This insurance does not apply to "bodily injury" or "property damage" included within the "products completed operations hazard" arising out of, resulting from, caused by, contributed to, or in any way related to work on any residential condominium or town home in a project or development in which more than the number of individual residential condominium units or town homes shown in item 2. of the above Schedule, have been built by you or on your behalf, or, are in any stage of development, planning or construction by you or on your behalf.

This exclusion shall not apply to maintenance, service, repairs, additions or remodeling:

- a. for an owner of an individual condominium unit or town home; or
- b. to those areas of a completed and occupied development or project that are under the control of a residential owner's association.

3. This insurance does not apply to "bodily injury" or "property damage" included within the "products completed operations hazard" arising out of, resulting from, caused by, contributed to, or in any way related to work on any location which has been or becomes converted by you or on your behalf into residential condominiums or town homes of

1 more than the number of individual residential condominium units or town homes shown
2 in item 3. of the above Schedule, regardless of whether or not any insured knew or had
3 involvement in the conversion or the conversion is prior to, during or subsequent to any
4 insured's work at the location.

5 This exclusion shall not apply to maintenance, service, repairs, additions or remodeling:

- 6 a. for an owner of an individual condominium unit or town home; or
- 7 b. to those areas of a completed and occupied development or project that are
8 under the control of a residential owner's association.

- 9 4. This insurance does not apply to "bodily injury" or "property damage" included within
10 the "products completed operations hazard" arising out of, resulting from, caused by,
11 contributed to, or in any way related to work on any timeshare development.

12 ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED

13 CAS3131-0917

14 5.7 Kinsale reserves the right to assert any other language from the Policy that may
15 be potentially applicable to this matter.

16 5.8 In accordance with applicable Washington law, Kinsale now brings this claim for
17 Declaratory Judgment seeking a judicial determination that it does not owe any defense or
18 indemnity obligations to the Underlying Defendants for some of all of the claims asserted against
19 them in the Underlying Lawsuit.

20 **VI. THERE ARE ACTUAL JUSTICIABLE CONTROVERSIES AS TO THE**
21 **RIGHTS AND OBLIGATIONS UNDER THE POLICY**

22 6.1 Kinsale reasserts paragraphs 1.1 through 5.8 and incorporate the same as though
23 fully stated herein.

6.2 The Policy provides coverage for sums that the insured becomes legally obligated
to pay as damages because of "property damage" to which this insurance applies.

6.3 The Policy further provides that the insurance applies to "property damage" only

1 if the “property damage” is caused by an “occurrence.”

2 6.4 There is an actual justiciable controversy as to whether the claims against the
3 Evolution Side involves claims for “property damage” as that term is defined.

4 6.5 There is an actual justiciable controversy as to whether the claims against the
5 Evolution Side involves an “occurrence” as that term is defined.

6 6.6 The Policy explicitly excludes coverage for “property damage” to “your work”
7 arising out of it or any part of it and included in the “products-completed operations hazard.”

8 6.7 There is an actual justiciable controversy as to whether the claims against the
9 Evolution Side involves claims for “property damage” to “your work” arising out of it or any part
10 of it and included in the “products-completed operations hazard” as those terms are defined.

11 6.8 The Policy explicitly precludes coverage for “property damage” included within
12 the “products completed operations hazard” arising out of, resulting from, caused by, contributed
13 to, or in any way related to work on any residential single-family house in a project or
14 development in which more than the number of residential single-family house shown in item 1.
15 of the Schedule of Form CA S3131-0917 have been built by you or on your behalf, or, are in any
16 stage of development, planning or construction by you or on your behalf.

17 6.9 There is an actual justiciable controversy as to whether the subject loss involves
18 the construction of a Tract Housing Project of more than the scheduled number of units.

19 6.10 The Policy expressly precludes coverage for “property damage” to “impaired
20 property” or property that has not been physically injured, arising out of a defect, deficiency,
21 inadequacy, or dangerous condition in “your product” or “your work.”

22 6.11 There is an actual justiciable controversy as to whether the claims against the
23

1 Evolution Side involves claims for “property damage” to “impaired property” or property that
2 has not been physically injured, arising out of a defect, deficiency, inadequacy, or dangerous
3 condition in “your product” or “your work.”

4 6.12 The Policy explicitly precludes coverage for “property damage” to “impaired
5 property” that has not been physically injured, arising out of a delay or failure by you or anyone
6 acting on your behalf to perform a contract or agreement in accordance with its terms.

7 6.13 There is an actual justiciable controversy as to whether the claims against the
8 Evolution Side involves claims for “property damage” to “impaired property” that has not been
9 physically injured, arising out of a delay or failure by you or anyone acting on your behalf to
10 perform a contract or agreement in accordance with its terms.

11 6.14 Kinsale reserves the right to assert any other policy language or policy coverage
12 forms that may be potentially applicable to the Underlying Lawsuit.

13 **VII. CLAIM FOR DECLARATORY JUDGMENT**

14 7.1 Kinsale reasserts paragraphs 1.1 through 6.14 and incorporate the same as though
15 fully set forth herein.

16 7.2 Actual and justiciable controversies exist as to whether Kinsale has an obligation
17 to defend Evolution Side under the Policy with regard to the claims asserted against the Evolution
18 Side in the Underlying Lawsuit.

19 7.3 Pursuant to and in accordance with 28 U.S.C. § 2201, Kinsale requests this Court
20 grant declaratory relief in its favor and enter a judicial determination that Kinsale does not have
21 an obligation to provide any defense coverage to Evolution Side under the Policy with regard to
22 the claims asserted against it in the Underlying Lawsuit.

1 7.4 Actual and justiciable controversies exist as to whether Kinsale has an obligation
2 to indemnify Evolution Side under the Policy with regard to the claims asserted against the
3 Underlying Defendants in the Underlying Lawsuit.

4 7.5 Pursuant to and in accordance with 28 U.S.C. § 2201, Kinsale requests this Court
5 grant declaratory relief in its favor and enter a judicial determination that Kinsale does not have
6 an obligation to provide any indemnity coverage to Evolution Side under the Policy with regard
7 to the claims asserted against the Underlying Defendants in the Underlying Lawsuit.

8 **VIII. PRAYER FOR RELIEF**

9 Kinsale, having alleged the foregoing, does now hereby pray for relief as follows:

10 1. For a determination of the rights and obligations of the parties hereto under the
11 Kinsale Policy.

12 2. For a judicial declaration that Kinsale owes no defense obligation to Evolution
13 Side for any claims asserted against it in the Underlying Lawsuit.

14 3. For a judicial declaration that Kinsale owes no indemnity obligation to Evolution
15 Side under the Kinsale Policy for any claims asserted against it in the Underlying Lawsuit.

16 4. For a judicial declaration that Lear and the Underlying Plaintiffs are bound by any
17 judicial declarations in this matter involving the Kinsale Policy.

18 5. For all interest allowed by law.

19 6. For attorney's fees and costs allowed by statute and law.

20 7. For other and further relief as the Court deems just and equitable.

1 Dated this 11th day of January, 2023.

2 LETHER LAW GROUP

3
4 /s/ Thomas Lether

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5 /s/ Ellen McGraw

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